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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,028	08/06/2003	Sarah Polzin	23093.00	7370

7590 03/24/2004

Richard C. Litman  
LITMAN LAW OFFICES, LTD.  
P.O. Box 15035  
Arlington, VA 22215

EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/635,028

Applicant(s)

POLZIN, SARAH

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 4 and 8-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, 6, 7 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Currier (US 6,059,633) in view of Green (US 5,946,726).

Currier provides an outer garment having a tubular body and the tubular body including a neck (figure 7, identifier 84), a shoulder portion on either side of the neck and a first under arm portion below each shoulder portion (figure 7, identifier 80). An inner garment secured within the tubular body of the outer garment (figure 7, identifier 40). The inner garment including two chest panels and a back panel and a pair of shoulder straps (figure 5, identifiers 42, 46 and 48). The back panel having opposing side edges contiguous with a side edge of each said chest panel (figure 5, identifiers 42, 46 and 50). The side edges of the torso panel for encompassing the upper body of a wearer and the shoulder straps extending between and connecting a top edge of the back panel and an upper portion of the chest panels (figure 5, identifier 54). The shoulder straps and the chest panels are formed in one continuous piece (figure 5, identifiers 46, 42 and 48). The outer garment comprises a women's blouse (figure 7, identifier 80: column 3, lines 44-56). The inner and outer garments are made from a flexible,

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lightweight material including a cotton and lycra(spandex) blend (column 3, lines 2-5). The tubular body of the outer garment of Currier is capable of being raised and each of the chest panels of the inner garment may be pulled downward under the women's breast to make the breast accessible to a baby while nursing.

However, Currier fails to teach the front panel having a lower edge secured to a top edge of the front torso panel. The first underarm portion of the outer garment is attached to a second underarm portion of the inner layer.

Green provides a garment having inner and outer portions (figure 2a, identifiers 25 and 34 and 32). The inner garment having a front panel with a lower edge secured to a top edge of the front torso panel (figure 2a, identifiers 40 and 42: column 4, lines 19-25). The first underarm portion of the outer garment is attached to a second underarm portion of the inner layer (figure 5, identifiers A, B, 38 and 34: column 3, lines 46-58 through column 4, lines 10-18).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the outer garment in the form of a t-shirt or a tank top because Applicant has not disclosed that the outer garment in the form of a t-shirt or a tank top provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the outer garment being a t-shirt, tank top or a blouse as long as it was an outer garment with an inner garment. Therefore, it would have been an obvious matter of design choice to modify Currier and Green to obtain the invention as specified in claims 6 and 7.

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At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided an inner and outer garment being made from a fabric containing 95% cotton and 5% spandex because Applicant has not disclosed that the fabric containing 95% cotton and 5% spandex provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the fabric containing any amount of spandex and cotton as long as the garment provides some stretch. Therefore, it would have been an obvious matter of design choice to modify Currier and Green to obtain the invention as specified in claim 14.

It would have been obvious to have provided the inner and outer garment of Currier with the inner and outer garment of Green, since the inner garment of Currier having a front panel with a lower edge secured to a top edge of the front torso panel would provide a front panel containing elastic for a more secure and fitted inner garment. Further, the inner and outer garment of Currier provided with the underarm attachment of Green would provide a inner garment that has additional securement to the outer garment so that the inner and outer garment when worn on a user do not become separated providing a neat appearance.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Currier and Green as applied to claim 1 above, and further in view of Alleyne (US 6,068,538).

However, Currier and Green fail to teach at least a portion of the chest panels are disposed in overlapping position relative to one another.

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Alleyne provides a portion of the chest panels disposed in overlapping position relative to one another (figures 3A and 3B, identifiers 12, 14, 24, 28, 22 and 26).

It would have been obvious to have provided the garment with inner and outer layers of Currier and Green with the overlapping chest panels of Alleyne, since the overlapping chest panels provide the user's chest with additional support and lift.

#### ***Allowable Subject Matter***

4. Claim 15 is allowed.
5. Claims 4 and 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. James, Bee, Edelman, Davis, Barg, Silber, Reichert et al., Cordova, Fiel, Frechette, Williams et al., Scott, White, Feigenbaum et al., White, Simone, Katze et al. and Sorensen are all cited to show closely related garments.

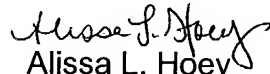
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alissa L. Hoey  
Patent Examiner  
Technology Center 3700